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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/753,105	01/07/2004	Kevin Buckley	BUCKEV.001A	2766

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EXAMINER

SCHRODE, WILLIAM THOMAS

ART UNIT PAPER NUMBER

3676

DATE MAILED: 07/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/753,105	<b>Applicant(s)</b> BUCKLEY, KEVIN	
	<b>Examiner</b> William Schrode	<b>Art Unit</b> 3676	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13-18 is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/3/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 and 6-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Bivens et al (4,699,321). In regard to claim 1, Bivens teaches a device comprising: a housing (4) having a base and sidewall extending upwardly from the base to define a cavity therein (as shown in Fig. 1); and a cap (6) detachably engages with the housing, wherein the cap is configured to substantially resembles a sprinkler cap. Although, Bivens fails to teach the device for hiding keys or other small devices out doors, wherein the cavity in the housing is configured to store keys and other items, Bivens teaches the structural limitations, therefore Bivens device is inherently capable of performing the functional limitations.

In regard to claim 2, Bivens teaches the device wherein an upper surface of the cap comprises features and markings that are present on a sprinkler cap.

In regard to claim 3, Bivens teaches the device wherein the cap comprises a conventional sprinkler cap.

In regard to claims 4, Bivens teaches the device wherein the housing is substantially cylindrical.

In regard to claims 6, Bivens teaches the device wherein the cap engages with the housing via a set of interengaging threads (as shown in Fig. 1).

In regard to claim 7, Bivens teaches the device further comprising an anchor (5) extending downwardly from the base and adapted to anchor the device in soil.

In regard to claim 8, Bivens teaches a device comprising a compartment (4); and a façade that resembles at least a portion of a pop-up sprinkler. Although, Bivens fails to teach the device for hiding keys or other small devices out doors, wherein the compartment is for hiding keys and other items, Bivens teaches the structural limitations, therefore Bivens device is inherently capable of performing the functional limitations.

In regard to claim 9, Bivens teaches the device wherein the façade resembles a pop-up sprinkler cap (6).

In regard to claim 10, Bivens teaches the device further comprising a removable cover (6) positioned over an opening formed in the compartment (as shown in Fig. 1).

In regard to claim 11, Bivens teaches the device wherein the façade of an upper portion of the device resembles an upper portion of a pop-up sprinkler.

In regard to claim 12, Bivens teaches the device wherein the compartment resembles a pop-up sprinkler housing.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bivens.

In regard to claim 5, Bivens teaches the claimed invention but fails to teach wherein the cap has a diameter of about 2 inches. It would have been obvious to one having ordinary skill in the art at the time of the invention was made to construct a cap with a diameter of about 2 inches, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range involves only routine skill in the art.

#### ***Allowable Subject Matter***

Claims 13-18 are allowed. In regard to claim 13, Bivens fails to teach a method of forming a key hiding device using a pop-up sprinkler. The art of record fails to teach a method of forming a key hiding device using a pop-up sprinkler. It would not have been obvious to one having ordinary skill in the art at the time of the invention to modify Biven's device, since such a modification would be hindsight.

#### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Cline, Cleveland, Jones, and Bivens et al.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to William Schrode whose telephone number is (571)272-1647. The examiner can normally be reached on Mon-Fri 9AM-6:30PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on (571)272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

WS  
6/23/06



Suzanne Dino Barrett  
Primary Examiner